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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2102

EDWARD KELTON
2559 Bradford Avenue
Hayward CA 94545

A C C U S A T I O N

Respiratory Care Practitioner License No. 16970

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about February 14, 1994, the Respiratory Care Board issued Respiratory Care Practitioner license Number 16970 to Edward Kelton (Respondent). The Respiratory Care Practitioner license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2007, unless renewed.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: “The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act].”

5 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter.”

7 6. Section 3750 of the Code states:

8 “The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 “(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.”

14 “(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).”

19 7. Section 3752 of the Code states:

20 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
21 made to a charge of any offense which substantially relates to the qualifications,
22 functions, or duties of a respiratory care practitioner is deemed to be a conviction within
23 the meaning of this article. The board shall order the license suspended or revoked, or
24 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
25 conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section
27 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
28 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the

1 accusation, information, or indictment.”

2 8. Section 3752.5 of the Code states:

3 “For purposes of Division 1.5 (commencing with Section 475), and this chapter
4 [the Respiratory Care Practice Act], a crime involving bodily injury or attempted bodily
5 injury shall be considered a crime substantially related to the qualifications, functions, or
6 duties of a respiratory care practitioner.”

7 9. California Code of Regulations, title 16, section 1399.370, states:

8 “For the purposes of denial, suspension, or revocation of a license, a crime or act
9 shall be considered to be substantially related to the qualifications, functions or duties of
10 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
11 perform the functions authorized by his or her license or in a manner inconsistent with the
12 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
13 those involving the following:

14 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
15 abetting the violation of or conspiring to violate any provision or term of the Act.”

16 COST RECOVERY

17 10. Section 3753.5, subdivision (a) of the Code states:

18 "In any order issued in resolution of a disciplinary proceeding before the board,
19 the board or the administrative law judge may direct any practitioner or applicant found to have
20 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
21 investigation and prosecution of the case."

22 11. Section 3753.7 of the Code states:

23 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
24 include attorney general or other prosecuting attorney fees, expert witness fees, and other
25 administrative, filing, and service fees."

26 12. Section 3753.1 of the Code states:

27 "(a) An administrative disciplinary decision imposing terms of probation may
28 include, among other things, a requirement that the licensee-probationer pay the monetary costs

1 associated with monitoring the probation. "

2 FIRST CAUSE FOR DISCIPLINE

3 (Substantially-related conviction)

4 13. Respondent is subject to disciplinary action under sections 3750(d),
5 3750(g), 3752, 3752.5 and CCR 1399.370(a) in that he was convicted of violating Penal Code
6 section 242, battery. The circumstances are as follows:

7 14. On or about May 17, 2006, at approximately 5:17 p.m., Hayward Police
8 Officers B. Reinke and B. Taylor investigated a call relating to a domestic disturbance.
9 Respondent's wife and two sons were standing in front of the residence. Respondent's wife
10 stated she and respondent were arguing, and that respondent had thrown a telephone/fax machine
11 at her, hitting her right leg below the knee. She stated that respondent then began "tearing up the
12 house." Officer Reinke observed that her right shin was bruised.

13 A. Respondent's 13 year old son, A., stated that after respondent threw the
14 telephone/fax machine at his mother, respondent pushed him. B., respondent's 21 year old son,
15 stated that respondent threw an electric drill with a cord attached at him, but the drill did not hit
16 him because the cord snagged on a parked car. B. was very afraid and thought his father was
17 going to "come after him." While they were outside, respondent pushed his son A. onto a
18 retaining wall, and A. fell into a planter box. A. was frightened and complained of pain to his
19 back and arm. B. jumped in front of respondent to block him, and respondent yelled that he was
20 going to rip B's head off. Respondent then left the house and went down the street.

21 B. The officers walked through the house and observed clothes, food, trash
22 and furniture scattered everywhere. As they were leaving, respondent returned. He was
23 belligerent and stated to the officers, "You better take me away or I'm going in there (the
24 house.)" Officer Reinke and Taylor arrested respondent and placed him in the back seat of the
25 patrol car.

26 C. While seated in the back of the car, respondent continued yelling at his
27 family, and yelled at his son B., "you're dead."

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15. On or about May 19, 2006, a criminal complaint titled *People of the State of California vs. Edward Fay Kelton*, case no. 393688-5 was filed in Superior Court, Alameda County, Hayward Hall of Justice. Count 1 charged respondent with violating Penal Code section 594(a), vandalism under \$400.00 damage. Count 2 charged respondent with Penal Code section 273.5(a), corporal injury to spouse. Count 3 charged respondent with violating Penal Code section 245(a)(1), assault with a deadly weapon to wit: fax machine, by means likely to produce great bodily injury. Count 4 charged respondent with violating Penal Code section 591, cutting a utility line (i.e. telephone line). Count 5 charged respondent with violating Penal Code section 273a (b), cruelty to child by inflicting injury. Count 6 charged respondent with violating Penal Code section 245(a)(1), assault with a deadly weapon to wit: a drill, by means likely to produce great bodily injury.

16. On or about January 10, 2007, respondent entered a plea of no contest and was found guilty of a misdemeanor violation of Penal Code section 242, battery. The remaining counts were dismissed. He was granted a conditional sentence of three years probation, ordered to stay away from his wife and children, ordered to attend 52 sessions of domestic violence class, and restitution was reserved.

17. Therefore, respondent's license is subject to discipline based on his conviction of violating Penal Code section 242, which is substantially related to the practice of respiratory care.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner license Number 16970, issued to Edward Kelton.

2. Ordering Edward Kelton to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: September 21, 2007

Original signed by Colleen Whitestine for: _____
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant